Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Section 272(f)(1) Sunset of the BOC Separate) WC Docket No. 02-112
Affiliate and Related Requirements)

COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

INTRODUCTION:

On May 24, 2002, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking to initiate an inquiry regarding the sunset of the statutory requirements under 47 U.S.C. § 272 imposed on Bell Operating Companies (BOCs) when they provide in-region, interLATA services.[1] Section 272 requires BOCs to provide in-region interLATA telecommunications services through separate corporate affiliates.[2] Section 272(f) contains sunset provisions, which state that the separate affiliate requirements on long distance will end three years after entry in a given state unless extended by FCC rule or order. In addition, section 272(f) preserves the existing authority of the FCC to

[1] Notice of Proposed Rulemaking, WC Docket No. 02-112, In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, FCC 02-148 (rel. May 24, 2002).

[2] 47 U.S.C. § 272 (a)(2).

prescribe safeguards consistent with the public interest, convenience, and necessity.

BACKGROUND:

The section 272 safeguard requirements were adopted based on a federal finding that the BOCs have market power in the provision of local exchange and exchange access services within their service areas. The federal government reasoned that as long as the BOCs retain market power in the provision of these services, they have an incentive and ability to discriminate against their long-distance competitors and engage in other anti-competitive behavior.

Under section 272 and its implementing rules, a BOC and its section 272 affiliate may not jointly own transmission and switching equipment. The BOC may not perform any operating, installation, or maintenance functions for facilities owned or leased by the 272 affiliate, and the 272 affiliate may not perform any of the aforementioned functions on BOC facilities. The separate 272 affiliate must maintain separate accounting books, and have separate officers and directors. The 272 affiliate may not seek to obtain credit under arrangements that would allow the creditor to look at the assets of the BOC. All transactions between the BOC and the separate 272 affiliate must be at arm's length. Furthermore, these transactions must be reduced to writing and available for public inspection.

By enacting section 272, Congress recognized that BOCs might attempt to discriminate and misallocate costs upon acquiring 271 approval. Regardless, Congress decided that the BOCs should be subject to the section 272 structural and nondiscrimination safeguards only temporarily after entry into the long-distance market. More specifically, Congress decided that upon the completion of a three-year period, the section 272 safeguards would cease to exist unless the FCC extends the period by rule or order.

Since section approval is provided on a state-by-state basis, the sunset dates of each BOC will vary depending upon when each state receives its section 271 approval. For example, Verizon's New York application was granted on December 22, 1999 and its Pennsylvania application was granted on September 19, 2001. Thus, the sunset date applicable in New York is December, 2002, and the sunset date applicable in Pennsylvania is September, 2004.

Currently, there are four long-distance affiliates of the Pennsylvania BOC, Verizon, operating in the Commonwealth of Pennsylvania. First, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance (VLD), who was granted a certificate of public convenience on September 26, 2001. VLD provides long distance services to the consumer and general business markets. Second, NYNEX Long Distance Company, d/b/a Verizon Enterprise Solutions (VES), who was granted a certificate on August 9, 2001. VES provides long distance and data services to the general business market in the former Bell Atlantic footprint. Third, Verizon Global Networks, Inc. operates without a certificate because it is not a common carrier. And finally, Verizon Select Services, Inc., whose predecessor was GTE Card Services, d/b/a GTE Long Distance, operates pursuant to authority originally given June 8, 1995, prior to the merger of GTE and Bell Atlantic. It provides long distance and data services to the large business market.

It is our understanding that Verizon uses, or intends to use, some or all of these four companies as the long distance affiliates in neighboring states, including Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia, West Virginia.

DISCUSSION:

The Pennsylvania Public Utility Commission (PA PUC) is the administrative agency of the Commonwealth of Pennsylvania that is responsible for regulating jurisdictional public utilities, including telecommunications carriers, pursuant to the Pennsylvania Public Utility Code. The PA PUC would like to take this opportunity to recommend that the FCC extend the structural and nondiscrimination safeguards established in section 272 generally, or, alternatively, extend the safeguards with respect to Verizon.

The first concern that the PA PUC would like to address is the maintenance of separate accounting. The separate accounting requirement of section 272 is consistent with the PA PUC's interest in preserving their right to do an audit. Audits can produce useful information for policymakers such as the PUC.

With recent changes and reduction in FCC accounting and reporting, the collapse of the affiliate into the incumbent local exchange carrier perpetuates what appears to be a continual reduction in available information, and, therefore, is not a preferred change. The PA PUC currently proscribes separate accounting for operations related to ILEC, CLEC, IXC, and CAP. Maintaining this separation will be difficult if the FCC allows the section 272 safeguards to collapse. This separate accounting method assists the PA PUC in its ability to design rates for the local exchange carrier segment, including the unbundled network elements. The ability to readily identify costs and revenues from the business segment is critical to ongoing rate review.

The second concern that the Pennsylvania Public Utility Commission has with the sunset of section 272 safeguards is slightly more logistical. Currently, Verizon has four long-distance affiliates doing business in Pennsylvania. As stated above, section 271 approval by the FCC is done on a state-by state basis. If the FCC proceeds to collapse the long-distance affiliates on a state-by-state basis, then there will not be a practical collapse until the long-distance affiliates in last state of the region collapses. It would make more economic sense to retain the long-distance affiliates until they collapse in all areas at once. This will result in greater corporate savings from the transaction.

Finally, section 272(d) requires a biennial audit post-entry to ensure compliance with the structural and transactional requirements of section 272. It makes little sense to collapse the affiliate three years after section 271 approval, because that is only half way through the second audit period. In the very least, the FCC should extend the section 272 sunset time limit another year so as to allow review of the BOCs compliance with section 272, and thus give the FCC a better understanding of local and long-distance competitive markets. Collapsing the affiliates prior to a review of the current status of competition in the market would defeat the purpose of section 272(d).

Respectfully Submitted,

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